



1 medication, amounts to mere speculation that plaintiff grieved the issue in an initial inmate  
2 grievance or in an inmate appeal from the denial of an earlier filed inmate grievance. (*Id.* at 5.)  
3 The court disagrees. The inmate grievance appeal response at issue here noted a six-day lapse in  
4 plaintiff’s medication, explains that the lapse was due to the shipment approval process, and that  
5 the issue “was rectified and should not affect you/another inmate again according to Corizon  
6 Health.” (Doc. No. 20 at 62.) This response is sufficient, if not to establish that plaintiff properly  
7 grieved the lapse in being provided medication, to at least create a factual dispute as to whether  
8 plaintiff properly grieved the lapse in being provided that medication.

9 Defendants next object that even if the evidence suggests that plaintiff referenced a lapse  
10 in receiving the gabapentin in an inmate grievance or appeal, no evidence suggests that plaintiff  
11 complied with various procedural requirements of the jail’s administrative review process,  
12 including, submission of a grievance within 14 days of the underlying incident, specification of  
13 the date, time, and location of the underlying incident, and identification of the name of the  
14 employee involved. (Doc. No. 57 at 5–6.) The Ninth Circuit has held, however, that the  
15 exhaustion requirement is satisfied “if prison officials decide a potentially procedurally flawed  
16 grievance on the merits.” *Reyes v. Smith*, 810 F.3d 654, 657 (9th Cir. 2016). When such is the  
17 case, “the purposes of the PLRA exhaustion requirement have been fully served: prison officials  
18 have had a fair opportunity to correct any claimed deprivation and an administrative record  
19 supporting the prison’s decision has been developed.” *Id.* at 658. The purported lack of evidence  
20 demonstrating compliance with the jail’s procedural requirements is therefore insufficient to  
21 demonstrate that plaintiff failed to exhaust available administrative remedies.

22 Finally, defendants object that even if defendant Horton’s inmate appeal response is  
23 construed as an administrative decision on the merits of plaintiff’s inmate grievance, no evidence  
24 suggests that a decision on the merits was rendered at *each* available step of the jail’s  
25 administrative review process—that is, in both an inmate grievance response and an inmate  
26 grievance appeal response. (Doc. No. 57 at 6.) Defendants rely on the decision in *Reyes*, which  
27 held that a prisoner exhausts the administrative remedies, despite failing to comply with a  
28 procedural rule, if prison officials “ignore the procedural problem and render a decision on the

1 merits of the grievance at each available step of the administrative process.” 810 F.3d at 658.  
2 Plaintiff’s first amended complaint attached an inmate grievance appeal response, the second and  
3 highest level of the jail’s administrative review process, which appears to have addressed the  
4 lapse in the providing of plaintiff’s gabapentin on the merits. It is reasonable to infer from this  
5 document that a decision on the merits in favor of plaintiff was rendered at the first, lowest level  
6 of administrative review.

7 In any event, the alleged failure by a plaintiff to exhaust administrative remedies is an  
8 affirmative defense that defendants bear the burden of proving. *Jones v. Bock*, 549 U.S. 199, 216  
9 (2007); *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014). In support of their motion for  
10 summary judgment, defendants attached a declaration by Lieutenant Michael Porter, who declares  
11 that he conducted a search of the inmate grievances filed by plaintiff, and that none of those  
12 inmate grievances alleged that plaintiff suffered a seizure on July 21, 2015 due to a lack of  
13 seizure medication. (Doc. No. 52-2 at ¶ 6.) Yet defendants conspicuously chose not to submit  
14 any of plaintiff’s inmate grievances or responses thereto in support of their motion. Because  
15 defendants have not met their burden of proving that plaintiff failed to exhaust the available  
16 administrative remedies, and because the court must draw “all reasonable inferences supported by  
17 the evidence in favor of the non-moving party,” *Walls v. Cent. Contra Costa Cty. Transit Auth.*,  
18 653 F.3d 963, 966 (9th Cir. 2011), the defendants’ motion for summary judgment is properly  
19 denied as recommended by the magistrate judge.

20 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a  
21 *de novo* review of this case. Having carefully reviewed the entire file, including defendants’  
22 objections, the court finds the findings and recommendations to be supported by the record and  
23 by proper analysis.

24 Accordingly:

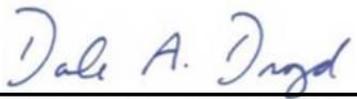
- 25 1. The findings and recommendations issued November 14, 2017 (Doc. No. 56) are  
26 adopted in full;
- 27 2. Defendants’ motion for summary judgment for failure to exhaust the  
28 administrative remedies (Doc. No. 52) is denied; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. This action is referred back to the assigned magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: March 22, 2018

  
UNITED STATES DISTRICT JUDGE